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Attorneys for Plaintiff Epic Games, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

No. 3:20-CV-05640-YGR

**DECLARATION OF NICHOLAS
PENWARDEN IN FURTHER
SUPPORT OF PLAINTIFF
EPIC GAMES INC.'S MOTION FOR A
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

Date: August 24, 2020, 3:00 p.m.

Courtroom: 1, 4th Floor

Judge: Hon. Yvonne Gonzalez-Rogers

1 I, Nicholas Penwarden, declare as follows:

2 1. I am Vice President of Engineering at Epic Games, Inc. (“Epic”). I submit this
3 declaration pursuant to the Court’s Order Permitting Limited Reply Brief dated August 21, 2020
4 (ECF No. 38), and in further support of Plaintiff Epic Games Inc.’s Motion for a Temporary
5 Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue
6 (ECF No. 17) (“Epic’s TRO Motion”). I submitted a declaration in support of Epic’s TRO
7 Motion on August 17, 2020, in which I described my background, current position, and job
8 responsibilities in paragraph 2.

9 2. Apple’s statement that it intends to terminate all of Epic’s accounts with the Apple
10 Developer Program and terminate Epic’s access to, among other things, “[a]ll Apple software,
11 SDKs, APIs, and developer tools”, including for purposes of developing and supporting the
12 *Unreal Engine*, has prompted numerous inquiries and expressions of concern to Epic from *Unreal*
13 *Engine* licensees. Specifically, Epic’s licensees have expressed concern that Apple’s actions
14 would disrupt and impede Epic’s ability to continue to support *Unreal Engine* for Apple devices
15 and for Epic’s engineers to continue to provide support for iOS and macOS projects.

16 3. Certain licensees have stated to Epic that, in light of the uncertainty resulting from
17 Apple’s actions, they would need to take affirmative steps to explore alternative engines for
18 upcoming high-profile projects. Other licensees that are already using the *Unreal Engine* for
19 projects in development have stated that they planned to make their projects available on iOS and
20 macOS and are concerned that their projects will now be disrupted, and that they will not be able
21 to launch on iOS or macOS as they had planned. The *Unreal Engine* licensees that have
22 contacted Epic on this issue are not limited to game developers but include licensees that use
23 *Unreal Engine* for other lines of business, including automotive design.

24 4. Epic could not, in the time available, obtain the consent of these licensees to be
25 publicly named, and so maintains the confidentiality of the licensees who have already reached
26 out in order to respect the confidential nature of the communications, the fact that some of the
27 licensees may consider their future applications and projects to be confidential, and the fact that
28 some of the licensees may be concerned about taking any public action that may be viewed by

1 Apple as adverse.

2 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
3 and correct and that I executed this declaration on August 22, 2020 in Semora, North Carolina.

4 
5 Nicholas Penwarden (Aug 22, 2020 20:07 EDT)
6 Nicholas Penwarden